

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALONDO WHEELER
(BOP Register No. 49557-177),

Movant,

V.

UNITED STATES OF AMERICA,

Respondent.

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No. 3:17-CV-0413-D

ORDER

On August 8, 2018 United States Magistrate Judge David L. Horan made findings, conclusions, and a recommendation in this case. On August 30, 2018 movant Alondo Wheeler (“Wheeler”) filed a *pro se* motion for leave to file *pro se* notice and notice of objection to recommendation and request for order of re-reference. Wheeler supplemented his motion on October 5, 2018. In his motion, Wheeler referenced his inability to confer with counsel appointed by the court to represent him in this proceeding as to his claim that his trial counsel was constitutionally ineffective for failing to file a notice of appeal—the second ground of his motion.

On October 15, 2018 Judge Horan conducted a hearing on the second ground of the motion. Movant and his court-appointed counsel attended. During that hearing, counsel represented to the court that he would confer with movant, and, if they decided to file objections as to the second ground, a motion for leave to file objections out of time would be filed. No motion has been filed. Accordingly, Judge Horan’s August 8, 2018 findings, conclusions, and recommendation are ripe for consideration.

The undersigned district judge has conducted *de novo* review of the findings, conclusions, and recommendation and, having determined that they are correct, adopts them.

Considering the record in this case and pursuant to Fed. R. App. P. 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that the movant has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

If movant files a notice of appeal,

- () movant may proceed *in forma pauperis* on appeal.
- (X) movant must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED.

January 14, 2019.



SIDNEY A. FITZWATER
SENIOR JUDGE